IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL SOUTH ZONAL BENCH AT CHENNAI

Appeal No.: ST/00190/2012

(Arising out of Order-in-Appeal No. 21/2012 (PST) dated 21.02.2012 passed by the Commissioner of Central Excise (Appeals), Chennai)

The Commissioner of G.S.T. & Central Excise, : Appellant
Puducherry Commissionerate

Versus

M/s. Anantha Inn Pvt. Ltd., : Respondent
154, S.V. Patel Salai,
Puducherry – 605 001

Appearance:-
Ms. T. Usha Devi, DC (AR)
for the Appellant
None
for the Respondent

CORAM:
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P Dinesha, Member (Judicial)

Date of Hearing/Decision:**11.10.2018**

Final Order No. 42650 / 2018

Per Madhu Mohan Damodhar :

Brief facts of the case are that proceedings were initiated against the respondent herein for non-discharge of service tax liability on Health and Fitness Services and Mandap Keeper Services, allegedly provided by them for the period from April, 2003 to March, 2008. A Show Cause Notice dated 20.10.2008 was issued to the respondent *inter alia* proposing to demand service tax liability of Rs. 21,02,639/- with interest thereon and imposition of penalties under various provisions of law.

1.2 On adjudication, the Original Authority, vide an Order dated 18.01.2010, confirmed the proposed demand with interest and also imposed penalties under Sections 77 and 78 of the Finance Act, 1994. In appeal, the Commissioner (Appeals) vide the impugned Order dated 21.02.2012 *inter alia* held that demand of tax on Health and Fitness Services is not sustainable on the ground that therapeutic massage is out of the ambit of service tax; that respondent is not eligible for exemption under Notification No. 12/2003 dated 20.06.2003 towards "Mandap Keeper Services" since they did not produce documents to claim the same; however, the appellants were filing ST-3 returns regularly and notice was issued only on 20.10.2008 and major portion of demand is hit by time-bar; that penalty is also not imposable as there was no suppression of facts. The Department, being aggrieved by this Order, is in appeal before this forum.

2. Today when the matter came up for hearing none were present for the respondent.

3.1 On behalf of the Revenue, Ld. AR Ms. T. Usha Devi submitted that the massages cannot be termed as "therapeutic" since the agreement between Dr. K. P. Suresh, the Medical Consultant, and respondent was on a revenue sharing basis; that it is implausible that Dr. K. P. Suresh was present during each and every massage. Further, nowhere in the agreement was there any mention about trained staff being used for the massages.

3.2 So also, the finding of the Commissioner (Appeals) that major portion of the demand is hit by time-bar is not acceptable for the reasons given in the grounds of appeal.

4. We have heard the Ld. AR on behalf of the Revenue and have gone through the facts.

5.1 We find that the Commissioner (Appeals) has placed considerable reliance on the CBEC Circular dated 16.08.2012 which has clarified that therapeutic massage does not come within the ambit of taxable service. The said Circular also explained therapeutic massage as one which is provided by *"… qualified professionals under medical supervision …".*

5.2 In our view, if protocols have been laid down by the Medical Consultant for the Ayurvedic massages, etc., and there is no dispute that they are being followed and further, when it has not been alleged that the masseurs are not trained professionals, surely the benefit of doubt has to be given to the respondent.

5.3 We are therefore unable to find any infirmity with the view taken by the Commissioner (Appeals) that the "Department has not adduced any evidence contrary to that nor made any enquiries about the alleged massages otherwise carried out by the appellant". The decision of the Commissioner (Appeals) setting aside the demand of service tax on such impugned Health and Fitness Services is therefore held to be sustainable. So Ordered. The Department Appeal on this score will fail.

6. Coming to the appeal of the Department against the Commissioner (Appeals) setting aside a major portion of the Show Cause Notice on time-bar and restricting the demand to only one year, we find that this decision has been taken on the finding that the appellant had registered themselves as "Mandap Keeper" and had been paying service tax and filing ST-3 returns since October, 2003, whereas the Show Cause Notice has been issued for the period April, 2003 to March, 2008. In the event, no merit is found in the

appeal of the Department on this score also, for which reason it is dismissed.

7. The appeal filed by the Department is therefore dismissed.

(Dictated and pronounced in open Court)

(P Dinesha)	**(Madhu Mohan Damodhar**)
Member (Judicial)	Member (Technical)

Sdd